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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**BILLFLOAT INC. dba SMARTBIZ
LOANS**, a Delaware corporation,

Plaintiff,

v.

**COLLINS CASH INC. dba SMART
BUSINESS FUNDING**, a New York
corporation; and **ABRAHAM COHEN**, an
individual,

Defendants.

Case No. 3:20-cv-09325-EMC

**SECOND AMENDED COMPLAINT
FOR:**

- Trademark Infringement;
- Unfair Competition;
- Breach of Contract;
- Trademark Infringement (State); and
- Unlawful Business Practices

DEMAND FOR JURY TRIAL



1 Plaintiff BillFloat Inc. *dba* SmartBiz Loans (“Plaintiff” or “SmartBiz”), by and
 2 through its undersigned counsel, states and alleges against Collins Cash Inc. and
 3 Abraham Cohen (collectively, the “Defendants”) as follows:

4 INTRODUCTION

5 1. This case involves willful trademark infringement and breach of contract.

6 2. Plaintiff provides a technology platform to small businesses and banks for
 7 obtaining and processing commercial loans, including Small Business Administration
 8 (“SBA”) loans, through Plaintiff’s website located at <SmartBizLoans.com> (“Proprietary
 9 Site”). Plaintiff owns a number of trademarks and copyrights protecting its brand and the
 10 content on its Proprietary Site.

11 3. Defendant Abraham Cohen (“Defendant Cohen” or “Mr. Cohen”) is the
 12 CEO, sole shareholder, and sole employee of Defendant Collins Cash Inc. *dba* Smart
 13 Business Funding (“Defendant Collins Cash” or “Collins Cash”). As the owner and only
 14 employee of Collins Cash, Defendant Cohen has complete control and decision-making
 15 power over every aspect of his business, including entering agreements on behalf of
 16 Collins Cash and the selection and adoption of company trademarks.

17 4. Defendant Cohen does not adhere to the usual corporate formalities in
 18 running the Collins Cash business. For example, Defendant Cohen does not keep formal
 19 books for the company or employ any sort of software to manage inflows and outflows of
 20 cash; there are no formal records documenting advertising and marketing expenditures
 21 for Collins Cash, rather Defendant Cohen relies on credit card statements and receipts to
 22 track this information. Furthermore, Defendant Cohen uses a fake name, Anthony Collin,
 23 when marketing and corresponding with customers, in order to hide his true identity.

24 5. Defendant Collins Cash is a financial services provider for small
 25 businesses. Defendants primarily engage in the dubious business practice of offering
 26 “merchant cash advances” to small business customers, a practice that is rife with fraud
 27 around the country and that has been criticized by the Federal Trade Commission and
 28 multiple state Attorneys General.



6. In order to profit from small business customers who are not interested in obtaining a merchant cash advance, Defendants needed a legitimate lending services partner to which to refer business. Thus, on or about June 6, 2018, Defendants applied to join the “SmartBiz Partner Program” (“Partner Program”), which would allow Defendants to earn commissions by referring customers to Plaintiff. To join the Partner Program, Defendants were required to submit a Partner Enrollment Form and enter into a contract with Plaintiff (the “Agreement”), agreeing to be bound by Plaintiff’s Terms and Conditions.

7. Under the Agreement, Defendants agreed, among other things, only to use Plaintiff’s trademarks, service marks, and logos in connection with the Partner Program.

8. Defendants have infringed on Plaintiff’s intellectual property rights by using a confusingly similar brand name without Plaintiff’s permission or authorization in an effort to deceive consumers and create the appearance of affiliation with Plaintiff’s trusted services. In fact, Mr. Cohen personally selected the Smart Business Funding brand, which he and Collins Cash later adopted.

9. Plaintiff has been substantially harmed as a result of Defendants’ misconduct and will continue to incur damages until Defendants’ infringement is enjoined.

AGENCY AND ALTER EGO ALLEGATIONS

10. Defendants were and are agents for one another.

11. Plaintiff is informed, believes, and thereon alleges that at all times herein mentioned, each Defendant was acting as the agent, employee, partner, co-conspirator, and/or joint venturer of the other.

12. Any allegations about acts of Defendant Collins Cash are allegations that Defendant Collins Cash acted through Defendant Cohen or other officers, directors, employees, agents, and/or representatives while they were acting within the actual or ostensible scope of their authority.



16. Given that Defendant Cohen is solely responsible for all decision-making authority and directing all actions of Defendant Collins Cash, including the selection and adoption of Defendant's infringing trademark, it would be inequitable to allow Mr. Cohen to hide behind his company.

18. This Court has personal jurisdiction over Defendants because, on

1 information and belief, Defendants have systematically targeted misconduct towards
2 California, including by sending email solicitations to Plaintiff, which has a principal
3 office in California. Furthermore, the Agreement between the Parties expressly states
4 that the Parties shall submit to the laws and jurisdiction of California regarding all
5 disputes.

6 19. Venue is proper pursuant to 28 U.S.C. §1391 because a substantial part
7 of the events or omissions giving rise to Plaintiff's claims occurred within this district.
8 Additionally, as part of the Agreement, the Parties expressly consented to venue in San
9 Francisco, California.

10 INTRADISTRICT ASSIGNMENT

11 20. This intellectual property action should be assigned on a district-wide basis.

12 THE PARTIES

13 21. Plaintiff is a Delaware corporation with foreign registration in California
14 and its principal place of business in San Francisco, California.

15 22. On information and belief, Defendant Collins Cash is a New York
16 corporation and maintains its principal place of business in Brooklyn, New York.

17 23. On information and belief, Defendant Cohen is an individual residing in
18 Florida. Mr. Cohen is the CEO, sole shareholder, and sole employee of Collins Cash.
19 As such, he is not separate from Defendant Collins Cash, and actively directed and
20 participated in the misconduct alleged herein and is thus personally liable.

21 24. On information and belief, Defendant Cohen often conducts business for
22 Collins Cash under the fake name Anthony Collin.

23 FACTUAL ALLEGATIONS

24 Plaintiff's Business and Trademarks

25 25. Plaintiff is a provider of small business loan services. Plaintiff's business
26 grew out of the 2008 financial crisis when banks had difficulties funding small business
27 growth. Plaintiff created an innovative solution focusing on SBA loans, low interest
28 rates, affordable monthly payments, and long repayment terms. Plaintiff has also built a



1 platform with advanced technology to streamline the SBA loan application process,
2 making it efficient and more cost effective for banks to provide small loans to
3 businesses. In particular, Plaintiff provides a platform to assist small businesses in
4 obtaining SBA and non-SBA loans through its Proprietary Site. Plaintiff's platform was
5 the first online marketplace to help small businesses successfully apply for SBA loans.
6 Plaintiff's services help businesses find lenders most likely to fund their loan, help
7 businesses improve their financial health, and help lenders efficiently process loans.

8 26. A key aspect of Plaintiff's services is that customers can benefit from a
9 streamlined application process and faster access to funding and can thus obtain
10 working capital from banks to pay for real estate, employees, marketing, equipment,
11 and other costs.

12 27. Since 2013, Plaintiff began providing its small business loan services
13 under a family of SMARTBIZ-formative trademarks, including SMARTBIZ, SMARTBIZ
14 LOANS, and SMARTBIZ ADVISOR (collectively, the "SMARTBIZ Marks").

15 28. On January 28, 2014, Plaintiff obtained a federal trademark registration
16 with the U.S. Patent and Trademark Office ("USPTO") for the mark SMARTBIZ (U.S.
17 Registration No. 4,475,356) for use on or in connection "[a]rranging of loans; [c]redit and
18 loan services; [f]inancial loan consultation; [f]inancing and loan services; [f]inancing
19 loans for small businesses" in International Class 036. On March 20, 2020, the
20 registration was deemed incontestable by the USPTO. The validity of the SMARTBIZ
21 mark and of the registration of the mark, Plaintiff's ownership of the mark, and Plaintiff's
22 exclusive right to use the registered mark in commerce for the above-mentioned
23 services are incontestable under 15 U.S.C.A. §1065, and 15 U.S.C.A. §1115(b).

24 29. On January 2, 2018, Plaintiff obtained a federal trademark registration with
25 the USPTO for the mark SMARTBIZ LOANS (U.S. Registration No. 5,368,330) for use
26 on or in connection with "[a]rranging of loans; [c]redit and loan services; [f]inancial loan
27 consultation; [f]inancing and loan services; [f]inancing loans for small businesses" in
28 International Class 036.



30. On February 26, 2019, Plaintiff obtained a federal trademark registration with the USPTO for the design mark SMARTBIZ (U.S. Registration No. 5,685,165) for use on or in connection with “[a]rranging of loans; [c]redit and loan services; [f]inancial loan consultation; [f]inancing and loan services; [f]inancing loans for small businesses” in International Class 036 and “[p]latform as a service (PAAS) featuring computer software platforms for users to apply for commercial loans; [p]roviding a secure electronic online system featuring technology which allows users to access tools that offer recommendations on how to strengthen their lending profile; [p]roviding a website featuring non-downloadable software for users to apply for commercial financing; [p]roviding an online non-downloadable Internet-based system application featuring technology enabling users to learn how banks typically evaluate their business and allows users to apply for commercial loans; [p]roviding an online non-downloadable Internet-based system application featuring technology enabling users to apply for commercial loans; [p]roviding temporary use of on-line non-downloadable software for users to apply for commercial loans” in International Class 042.

31. On March 12, 2019 Plaintiff obtained federal trademark registrations for the word mark and design mark SMARTBIZ ADVISOR (U.S. Registration Nos. 5,695,705 and 5,695,704) for use on or in connection with “[a]rranging of loans; [c]redit and loan services; [f]inancial loan consultation; [f]inancing and loan services; [f]inancing loans for small businesses” in International Class 036 and “[p]latform as a service (PAAS) featuring computer software platforms for users to apply for commercial loans; [p]roviding a secure electronic online system featuring technology which allows users to access tools that offer recommendations on how to strengthen their lending profile; [p]roviding a website featuring non-downloadable software for users to apply for commercial financing; [p]roviding an online non-downloadable Internet-based system application featuring technology enabling users to learn how banks typically evaluate their business and allows users to apply for commercial loans; [p]roviding an online non-downloadable Internet-based system application featuring technology enabling users to



1 apply for commercial loans; [p]roviding temporary use of on-line non-downloadable
2 software for users to apply for commercial loans” in International Class 042.

3 32. Plaintiff has expended, and continues to expend, considerable sums to
4 advertise and promote its services under the SMARTBIZ Marks. Additionally, Plaintiff
5 has been recognized as the nation’s #1 facilitator of certain SBA loans, received
6 outstanding customer satisfaction ratings, and obtained numerous awards for its
7 business. By reason of its longstanding commercial success, Plaintiff’s SMARTBIZ
8 Marks and corresponding services are identified in the public’s mind as originating with
9 Plaintiff.

10 **Breach of Contract and Willful Infringement**

11 33. Through its Proprietary Site, Plaintiff offers the ability for individuals and/or
12 businesses to join its SmartBiz Partner Program (“Partner Program”).

13 34. By joining the Partner Program, Partners can earn commissions on funded
14 SBA loan applications opened by their referred clients.

15 35. On or about June 6, 2018, the Parties entered into the Agreement,
16 whereby they agreed, among other things:

- 17 a. That Defendants would identify customers who may benefit from SmartBiz
18 services and introduce such customers to SmartBiz.
- 19 b. As consideration for the services provided by Defendants under the
20 Agreement, Plaintiff would pay Defendants a commission for each lead
21 generated.

22 36. As part of the Agreement, the Parties agreed to grant each other a limited
23 non-exclusive, non-transferable right to display the trademarks, service marks, and
24 logos, in the form and format supplied by the other Party, *solely* in connection with the
25 Partner Program.

26 37. During the term of the Agreement, Defendants submitted several leads to
27 SmartBiz under the name Collins Cash, however these loan applications were either
28 declined or withdrawn, and as such, did not warrant payment by Plaintiff.



38. Plaintiff became aware that Defendants had breached the Agreement by infringing on Plaintiff's trademark rights when Plaintiff received an email solicitation from Collins Cash advertising finance and loan services under the confusingly similar name SMART BUSINESS FUNDING (the "Infringing Mark").

39. Due to the proximity of the party's names, near identical services offered, along with the geographic overlap in which the services are provided, Plaintiff became increasingly concerned about the resulting confusion among the consuming public. Specifically, Plaintiff is concerned that consumers believe that Defendants are affiliated, connected, or associated with Plaintiff and/or that Defendants' services originate from, or are sponsored or approved by, Plaintiff.

40. Concerned about the potential confusion among consumers, Plaintiff sent a demand letter ("Plaintiff's Letter") to Defendants on April 14, 2020, requesting that Defendants cease and desist use of its Infringing Mark based on a likelihood of confusion with Plaintiff's SMARTBIZ Marks, altogether making it clear that Defendants' use was unauthorized and amounted to infringement.

41. Notwithstanding Plaintiff's prior established rights in the SMARTBIZ Marks, on May 2, 2020, Defendants filed U.S. Application No. 88/898,248 for the Infringing Mark for use on or in connection with:

Class 035: Business advisory services, consultancy and information; Business advice and information relating to loans, finance and capital; Business support services, namely, business consulting to freelancers, start-ups, existing businesses and non-profit organizations.

Class 036: Brokerage in the field of credit card processing terminals; Brokerage in the field of business lines of credit; Cash advance services for businesses and merchants; Factoring agencies; Financing and loan services; Merchant banking services; Accounts receivables financing; Banking and financing services; Financial services, namely, credit repair and restoration; Providing working capital; Providing working capital financing to small businesses and small business owners.

42. In response to the filing of Defendants' application for the Infringing Mark, Plaintiff filed a Notice of Opposition against the application on October 22, 2020 with the Trademark Trial and Appeal Board.



43. Defendants' use and registration of the Infringing Mark is likely to cause confusion, mistake, and/or deception because the public is likely to falsely believe that Defendants' services emanate from Plaintiff, or that the services are endorsed, approved, or sponsored by, affiliated, or associated with, or otherwise connected to, Plaintiff.

44. On information and belief, Defendants have received a financial benefit directly attributable to their infringement, including through website traffic and sales.

45. As a direct and proximate result of Defendants' breach and bad faith infringement of Plaintiff's intellectually property rights, Plaintiff has been substantially harmed, including through lost profits and loss of goodwill, and Defendants have wrongfully obtained profits.

FIRST CLAIM FOR RELIEF

Trademark Infringement, 15 U.S.C. §§1114, *et seq.*

46. Plaintiff repeats and incorporates each allegation contained in the paragraphs above as if fully alleged herein.

47. Plaintiff has continuously used its federally registered SMARTBIZ Marks in commerce throughout the nation in connection with its goods and services.

48. On information and belief, Defendants had knowledge of Plaintiff's rights in its SMARTBIZ Marks prior to Defendants' use of the Infringing Mark and intended to cause confusion, mistake, or deception and misappropriate Plaintiff's goodwill; despite notification of its infringement, Defendants have knowingly, deliberately, and willfully continued to use the Infringing Mark in interstate commerce in connection with the sale, offering for sale, distribution, and/or advertising of Defendants' goods and services.

49. Defendants' conduct is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Defendants and Plaintiff and as to the origin, sponsorship, or approval of its products and services, given the similarity and directly competitive fields of Plaintiff's Marks and the Infringing Mark.

50. Defendants' conduct constitutes willful trademark infringement in violation



1 of §32 of the Lanham Act, 15 U.S.C. §1114.

2 51. As a result of Defendants' conduct Plaintiff has suffered damages and
3 irreparable injury for which there is no adequate remedy at law.

4 **SECOND CLAIM FOR RELIEF**

5 **Unfair Competition, 15 U.S.C. §§1125(a)(1)(A), et seq.**

6 52. Plaintiff repeats and incorporates each allegation contained in the
7 paragraphs above as if fully alleged herein.

8 53. Plaintiff has continuously used its federally registered SMARTBIZ Marks in
9 commerce throughout the nation in connection with its goods and services.

10 54. On information and belief, Defendants had actual and constructive
11 knowledge of Plaintiff's rights in its SMARTBIZ Marks and, in adopting and using the
12 Infringing Mark, intended to cause confusion, mistake, or deception and misappropriate
13 Plaintiff's goodwill. Despite Plaintiff's requests to cease and desist, Defendants have
14 knowingly, deliberately, and willfully continued to use the Infringing Mark in interstate
15 commerce in connection with the sale, offering for sale, distribution, and/or advertising
16 of Defendants' goods and services.

17 55. Defendants' conduct is likely to cause confusion, mistake, or deception as
18 to the affiliation, connection, or association of Defendants and Plaintiff and as to the
19 origin, sponsorship, or approval of its products and services, given the similarity and
20 directly competitive fields of Plaintiff's Marks and the Infringing Mark.

21 56. Defendants' conduct constitutes unfair competition in violation of §43 of
22 the Lanham Act, 15 U.S.C. §1125(a)(1)(A).

23 57. As a result of Defendants' conduct, Plaintiff has suffered damages and
24 irreparable injury for which there is no adequate remedy at law.

25 **THIRD CLAIM FOR RELIEF**

26 **Breach of Contract**

27 58. Plaintiff repeats and incorporates each allegation contained in the
28 paragraphs above as if fully alleged herein.



59. On or around June 6, 2018, Defendants entered into a contract with Plaintiff by using the Proprietary Site and joining Plaintiff's Partner Program. The essential terms of the contract were clearly and unambiguously laid out in the terms and conditions and included that Defendant would not use or reproduce Plaintiff's intellectual property outside of the Program.

60. Plaintiff performed all obligations under the contract.

61. Defendants have materially breached their duties under the contract, including by intentionally infringing on Plaintiff's Marks.

62. As a direct result of Defendants' breach, Plaintiff has incurred damages.

FOURTH CLAIM FOR RELIEF

Trademark Infringement, Cal. Bus. & Prof. Code §§14245, et seq.

63. Plaintiff repeats and incorporates each allegation contained in the paragraphs above as if fully alleged herein.

64. Plaintiff has continuously used its SMARTBIZ Marks in commerce throughout the nation in connection with its goods and services.

65. The SMARTBIZ Marks are distinctive and famous in California, as well as throughout the United States.

66. On information and belief, Defendants had knowledge of Plaintiff's rights in its federally registered Marks and, in creating and using the Infringing Mark, intended to cause confusion, mistake, or deception and misappropriate Plaintiff's goodwill. Defendants have knowingly, deliberately, and willfully continued to use the Infringing Mark in interstate commerce in connection with the sale, offering for sale, distribution, and/or advertising of Defendants' goods and services.

67. Defendants' conduct is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Defendants and Plaintiff and as to the origin, sponsorship, or approval of its products and services, given the similarity and directly competitive fields of Plaintiff's SMARTBIZ Marks and the Infringing Mark.

68. Defendants' conduct constitutes unfair, unlawful, and/or fraudulent



business practices within the meaning of Cal. Bus. & Prof. Code §14245, *et seq.*

69. As a direct result of Defendants' conduct, Plaintiff has suffered damages and irreparable injury for which there is no adequate remedy at law.

FIFTH CLAIM FOR RELIEF

Unlawful Business Practices, Cal. Bus. & Prof. Code §§17200, *et seq.*

70. Plaintiff repeats and incorporates each allegation contained in the paragraphs above as if fully alleged herein.

71. Plaintiff has continuously used its federally registered SMARTBIZ Marks in commerce throughout the nation in connection with its goods and services.

72. On information and belief, Defendants had knowledge of Plaintiff's rights in its Marks and, in creating and using the Infringing Mark, intended to cause confusion, mistake, or deception and misappropriate Plaintiff's goodwill. Defendants have knowingly, deliberately, and willfully continued to use the Infringing Mark in interstate commerce in connection with the sale, offering for sale, distribution, and/or advertising of Defendants' goods and services.

73. Defendants' conduct is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Defendants and Plaintiff and as to the origin, sponsorship, or approval of its products and services, given the similarity and directly competitive fields of Plaintiff's SMARTBIZ Marks and the Infringing Mark.

74. Defendants' conduct constitutes unfair, unlawful, and/or fraudulent business practices within the meaning of Cal. Bus. & Prof. Code §§17200, *et seq.*

75. As a direct result of Defendants' conduct, Plaintiff has lost profits for which Defendants have been unjustly enriched, and Plaintiff has suffered irreparable injury for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That the Court enter judgment against Defendants that they have committed and are committing acts of trademark infringement, breach of contract, and



1 unlawful business practices.

2 2. That the Court order Defendants to pay Plaintiff's damages as follows:

3 a. Plaintiff's damages and Defendants' profits pursuant to 15 U.S.C. §1117

4 (a);

5 b. Restitution for violation of Cal. Bus. & Prof. Code §§17200, *et seq.*;

6 c. Plaintiff's attorney's fees, including pursuant to 15 U.S.C. §§1117, *et seq.*;

7 d. Plaintiff's costs; and

8 e. Interest, including prejudgment interest, on the foregoing sums.

9 3. That the Court issue injunctive relief against Defendants, requiring
10 Defendants to immediately and permanently cease all infringement.

11 4. That the Court order Defendants to withdraw U.S. Application No.
12 88/898,248 for the Infringing Mark. Or in the alternative, if Defendants Application
13 should register, that the Court order cancellation of Defendant's trademark Registration,
14 per 15 U.S.C. §1119.

15 5. That the Court grant to Plaintiff such additional relief as is just and proper.

16
17 Respectfully Submitted,

18 DATED: October 7, 2021

KRONENBERGER ROSENFELD, LLP

19
20 By: s/ Karl S. Kronenberger
Karl S. Kronenberger

21
22 Attorneys for Plaintiff BillFloat Inc.



REQUEST FOR JURY TRIAL

Plaintiff hereby demands a trial of this action by jury.

Respectfully Submitted,

DATED: October 7, 2021

KRONENBERGER ROSENFELD, LLP

By: s/ Karl S. Kronenberger
Karl S. Kronenberger

Attorneys for Plaintiff BillFloat Inc.